

**JUDGE CROTTY**

**13 CV 8815**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUAN ALMENDRAS; DARIO ALTAMIRANDA;  
ROGELIO VERA; and GILBERTO OLIVEIRA; on  
behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

ATELIER MÉRIGUET-CARRÈRE; ATELIER  
PREMIERE, INC. A/K/A PREMIERE PAINTING CO.,  
INC. A/K/A PREMIERE GENERAL PAINTING CO.,  
INC. A/K/A PREMIERE CUSTOM & DECORATIVE  
PAINTING; ANTOINE COURTOIS; and SAUL  
SOARES DE JESUS,

Defendants.

**COLLECTIVE AND  
CLASS ACTION  
COMPLAINT**

**JURY TRIAL  
DEMANDED**

No. \_\_\_\_\_



**PRELIMINARY STATEMENT**

1. Juan Almendras, Dario Altamiranda, Rogelio Vera, and Gilberto Oliveira (collectively the “Named Plaintiffs”) bring this action, on behalf of themselves and all others similarly situated, to recover hundreds of thousands of dollars in overtime pay and unlawful deductions stolen from their wages by the Defendants.

2. The Named Plaintiffs spent years working for the Defendants, painting high-end residences and businesses of multi-millionaires, including the properties of celebrities like Naomi Campbell and Valentino Garavani, and foreign royalty like the Emir of Qatar, whose home has been reported to be the largest private residence in Manhattan. During that time, the Named Plaintiffs and their fellow painters (collectively the “Plaintiffs”) regularly worked more than 40 hours per week at Defendants’ job sites. Their work was closely supervised by Defendants, who told them where to work, when to show up, what equipment and techniques to

use, what to wear at work, how to behave at job sites, and even what time to break for lunch. Defendants provided the lion's share of supplies and paid for Plaintiffs' travel to far-flung jobs across the country and overseas. If Defendants deemed Plaintiffs' work to be unsatisfactory, they sent them back to the job site to touch up the work until it met Defendants' standards. In short, any reasonable observer would conclude that Plaintiffs were Defendants' employees.

3. Despite these overwhelming indicia of an employer-employee relationship between Defendants and their painters, Defendants have disregarded obvious economic realities and misclassified Plaintiffs as independent contractors. As a result of that misclassification, over a period of years, Defendants have denied the Named Plaintiffs thousands of dollars in overtime pay to which they were entitled and have unlawfully stolen thousands more in unlawful deductions from their wages.

4. Defendants are two companies that specialize in high-end decorative painting and the owners and managers of those companies. Atelier Mériduet-Carrère is a French company that has been hired by an array of wealthy and famous clients and has even worked on the French presidential palace. Atelier Premiere, Inc. is a New York-based painting company founded more recently by Atelier Mériduet-Carrère's owner, Antoine Courtois. The two companies are closely intertwined.

5. Atelier Premiere, Inc.'s web site boasts that it "is recognized by many decorators and architectural firms for the quality of our workmanship and quality of service." Atelier Mériduet-Carrère touts its "pursuit of perfection—balancing technical and artistic virtuosity, the hand and the eye, patience and knowledge."

6. Despite their great successes in the realm of high-end painting, Defendants have not shared the wealth with their employees. Instead, they have capitalized on their workers'

position of economic vulnerability to increase their own profits by denying their employees fundamental protections guaranteed by federal and state law.

7. This collective and class action seeks legal and equitable redress for serious transgressions of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, (hereinafter “FLSA”) and the New York Labor Law, §§ 190 *et seq.* and §§ 650 *et seq.* (hereinafter “NYLL”). In a breach of its statutory obligations, Defendants Atelier Mériguet-Carrère, Atelier Premiere, Inc. (also known at various times relevant to this complaint as Premiere Painting, Inc., Premiere Painting Co., Inc., and Premiere General Painting Co., Inc.), as well as their managers, Antoine Courtois and Saul Soares de Jesus, failed to pay Plaintiffs proper overtime compensation, took unlawful deductions from each of their painters’ wages, and failed to provide adequate time-of-hire notices and wage statements, among other violations.

8. The Named Plaintiffs, on behalf of themselves and all others similarly situated, upon personal knowledge as to themselves and upon information and belief as to other matters, bring this action to recover damages and seek equitable relief arising out of their employment by Defendants.

### **JURISDICTION AND VENUE**

9. This Court has subject matter jurisdiction over Plaintiffs’ claims under the FLSA pursuant to 29 U.S.C. § 216, and has original jurisdiction under 28 U.S.C. § 1331 because Plaintiffs’ FLSA claims arise under a law of the United States.

10. This Court has supplemental jurisdiction over Plaintiffs’ claims under the NYLL pursuant to 28 U.S.C. § 1367(a), because these claims are so closely related to Plaintiffs’ claims under the FLSA that they form parts of the same case or controversy under Article III of the United States Constitution.

11. Pursuant to the FLSA, 29 U.S.C. § 216(b), the Named Plaintiffs have consented in writing to be parties to this lawsuit.

12. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial part of the events or omissions giving rise to the claims occurred in this Judicial District.

## **PARTIES**

### **I. Named Plaintiffs**

13. Juan Almendras, who resides in Yonkers, New York, was employed by the Defendants as a painter from approximately January 2009 to September 2012.

14. Dario Altamiranda, who resides in Queens, New York, was employed by the Defendants as a painter from approximately December 2008 to September 2012.

15. Rogelio Vera, who resides in South Amboy, New Jersey, was employed by the Defendants as a painter from approximately December 2008 to September 2012.

16. Gilberto Oliveira, who resides in Scarsdale, New York, was employed by the Defendants as a painter from approximately August 2006 to September 2012.

17. At all relevant times, Plaintiffs were engaged in commerce because Plaintiffs handled, prepared, or otherwise worked on materials that had been moved in or produced for interstate commerce.

18. Plaintiffs were engaged in an industry affecting commerce.

### **II. Defendants**

19. Defendant Atelier Premiere, Inc. is a domestic business corporation registered as doing business in New York with its principal offices located at 216 West 139th Street, New York, New York. Defendant Atelier Premiere, Inc. was previously registered during the period

from January 17, 2007 to October 24, 2013 with the New York Department of State under the entity name Premiere General Painting Company, Inc. At times relevant to this complaint, Defendant Atelier Premiere, Inc. sent correspondence and documents to Plaintiffs under the names Premiere Custom & Decorative Painting, Premiere General Painting Company, and Premiere General Painting Co., Inc. Defendant Atelier Premiere, Inc. is referred to herein as “Premiere.”

20. Defendant Atelier Mériquet-Carrère is a “société par actions simplifiée,” or simplified joint-stock company, organized under the laws of France. Defendant Atelier Mériquet-Carrère is referred to herein as “Mériquet.”

21. Mériquet is closely intertwined with Premiere, which renders services on its behalf within the State of New York. Mériquet transacts business in New York through Premiere and otherwise maintains an active and continuous presence in New York.

22. Upon information and belief, Premiere and Mériquet both have employees engaged in commerce or in the production of goods for commerce amounting to an annual gross volume of business not less than \$500,000 exclusive of excise taxes, and are enterprises engaged in commerce or in the production of goods for commerce as defined in 29 U.S.C. § 203(s)(1)(A).

23. Mériquet’s officers and employees routinely supervise Premiere’s business. For example, Mériquet officers regularly travel to New York to supervise and inspect Premiere work sites. Mériquet’s accountants travel from France to New York to inspect Premiere’s books, and Premiere managers contact Mériquet’s accountants in France with questions regarding bookkeeping and payroll. Mériquet workers travel from France and take up temporary residence at Premiere’s headquarters during their stay in New York. Premiere workers work on some projects wearing Mériquet uniforms, and are paid for this work by Premiere. Defendant Soares

de Jesus regularly supervises the work of Mériquet workers in the State of New York. He in turn is supervised by Defendant Courtois, the President of Mériquet.

24. Defendant Saul Soares de Jesus is the Chief Executive Officer of Atelier Premiere, Inc. Upon information and belief, he is also a part-owner of Premiere. From the time he joined Premiere in or about 2007 until the present, Defendant Soares de Jesus was and has been at all times the employer and direct supervisor of the Named Plaintiffs and their fellow painters in the course of their work for the company.

25. Defendant Antoine Courtois is the President of Mériquet. Upon information and belief, he is the primary owner of both Premiere and Mériquet. He is also the “Managing Director” of 216 USA Stone LLC, the entity that owns Premiere’s headquarters in West Harlem.

26. During the period relevant to this complaint, Defendant Courtois regularly traveled from France to New York to supervise the operations of Premiere. Defendant Courtois was Defendant Soares de Jesus’s superior and gave him direction and instructions concerning the operation of Premiere. Defendant Courtois was sometimes referred to as “the big boss” by Defendant Soares de Jesus and other Premiere workers because of his role in the operation.

27. Defendants Mériquet, Premiere, Courtois, and Soares de Jesus, are collectively referred to herein as “Defendants.”

28. Upon information and belief, at all relevant times, Defendants were employers who had the power to hire and fire Plaintiffs, to control the terms and conditions of their employment, to determine the rate and manner of any compensation provided to Plaintiffs, to withhold their compensation, to maintain employment records, and to comply with regulations of governmental agencies.

**COLLECTIVE ACTION ALLEGATIONS**

29. The Named Plaintiffs bring the First Claim for Relief, the FLSA claim, on behalf of themselves and all similarly situated persons who work or have worked as painters for Defendants within the United States and suffered denials of overtime pay due as a result of their improper classification as independent contractors (the “FLSA Plaintiffs”).

30. At all relevant times, the FLSA Plaintiffs are and have been similarly situated, have had substantially similar job requirements and pay provisions, and have been subject to Defendants’ decisions, plans, policies, programs, practices, procedures, protocols, routines, and rules, which include Defendants’ willfully failing and refusing to pay them at the legally required time-and-a-half rates for work in excess of forty (40) hours per workweek.

31. Defendants are liable under the FLSA for, *inter alia*, failing to properly compensate the FLSA Plaintiffs. The exact number of individuals covered by the collective action is unknown to the Named Plaintiffs at this time, but it is believed to be more than one hundred. The FLSA Plaintiffs have been underpaid in violation of the FLSA and would benefit from the issuance of a court-supervised notice of the present lawsuit and the opportunity to join the present lawsuit. Those similarly situated employees are known to Defendants, are readily identifiable, and can be located through Defendants’ records. These similarly situated employees should be notified and allowed to opt in to this action pursuant to 29 U.S.C. § 216(b).

**CLASS ACTION ALLEGATIONS**

32. The Named Plaintiffs bring the Second, Third, and Fourth Claims For Relief, the NYLL claims, pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class consisting of:

all persons who, while based in the State of New York, work or have worked as painters for Defendants, and suffer or have suffered denials of overtime pay due and/or unlawful deductions from their wages and/or denials of required wage statements and/or time-of-

hire notices due to their improper classification as independent contractors (collectively the “Rule 23 Class”).

33. The Rule 23 Class is so numerous that joinder of all members is impracticable.

The exact number of the Rule 23 Class members is unknown to Plaintiffs at this time, but it is believed to be more than one hundred. For purposes of notice and other purposes related to this action, the identities and addresses of the Rule 23 Class members are known to Defendants and are readily available in their employment records.

34. The Named Plaintiffs’ claims are typical of the claims of the other members of the Rule 23 Class. The Named Plaintiffs and all other members of the Rule 23 Class sustained damages arising out of Defendants’ conduct in violation of the NYLL. The Rule 23 Class members are employed, or were employed, by Defendants as painters and were improperly classified as “independent contractors” by Defendants. They enjoy the same statutory rights and protections, and have sustained similar types of damages as a result of Defendants’ failure to comply with the NYLL.

35. The Named Plaintiffs will fairly and adequately protect the interests of the members of the Rule 23 Class and have retained counsel competent and experienced in complex class action litigation, including suits involving unpaid overtime and misclassification of workers.

36. The Named Plaintiffs have no interests that are contrary to or in conflict with those of the other members of the Rule 23 Class.

37. The Named Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

38. Common questions of law and fact exist as to all members of the Rule 23 Class and predominate over any questions affecting solely individual members. Among the questions of law and fact common to the Rule 23 Class are:

(a) Whether Defendants violated the NYLL and its supporting regulations as alleged herein;

(b) Whether Defendants improperly classified Rule 23 Class members as independent contractors and thus denied Named Plaintiffs and Rule 23 Class members the common benefits of employee status, including, but not limited to, overtime pay;

(c) Whether Defendants failed to pay overtime wages to Plaintiffs as required by the NYLL and its supporting regulations;

(d) Whether Defendants took unlawful deductions from Plaintiffs' wages;

(e) Whether Defendants unlawfully failed to provide Plaintiffs with required time-of-hire notices and wage statements;

(f) Whether Defendants unlawfully failed to post notices in Plaintiffs' workplaces as required by N.Y. Comp. Codes R. & Regs. tit. 12, § 142-2.8;

(g) Whether the members of the Rule 23 Class have sustained damages, and if so, the proper measure of such damages, and

(h) Whether Defendants' actions were willful.

39. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Although the relative damages suffered by individual Rule 23 Class members are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. Class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments regarding

Defendants' practices. Important public interests will be served by addressing the matter as a class action. The adjudication of individual litigation claims would result in a great expenditure of court and public resources. Treating the claims as a class action would result in a significant savings of these costs. The prosecution of separate actions by individual members of the Rule 23 Class would create a risk of inconsistent and/or varying adjudications with respect to the individual members of the Rule 23 Class, establishing incompatible standards of conduct for Defendants and resulting in the impairment of Plaintiffs' rights and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

40. A class action will also allow for the redress of harm to employees who are unwilling or unable to affirmatively bring or opt into a lawsuit. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing claims because doing so can harm their employment, future employment, and future efforts to secure employment. Class actions provide class members who are not named in the complaint a degree of anonymity which allows for the vindication of their rights while eliminating or reducing these risks.

### **FACTUAL ALLEGATIONS**

#### **I. Defendants Misclassified Plaintiffs as Independent Contractors**

41. Plaintiffs held the position of "painter" while employed by Defendants.
42. At all relevant times, Defendants controlled and supervised Plaintiffs' work.

43. Defendants classified Plaintiffs as independent contractors with full knowledge that this classification was contrary to the economic reality of the arrangement.

44. At all times relevant to this complaint, Plaintiffs received their pay weekly by check or, more commonly, by direct deposit from Defendants. From approximately 2009 to the present, Plaintiffs were required to submit time records to Defendants on a weekly basis. Plaintiffs were paid by Defendants for work they performed for Defendants at Defendants' place of business and other designated work locations under Defendants' direction.

45. If Plaintiffs did not have a bank account when they began working for Defendants, Defendants often suggested that they open one (usually at Bank of America) and then helped them open one. Defendants then paid Plaintiffs by direct deposit to the accounts they helped Plaintiffs open.

46. Defendants directed Plaintiffs as to how to perform their work as painters. Defendants specifically instructed Plaintiffs as to which colors and equipment and techniques to use for each project. Defendants regularly inspected Plaintiffs' work. The determination whether Plaintiffs' work was satisfactory rested solely with Defendants. If Defendants deemed Plaintiffs' work unsatisfactory, they required Plaintiffs to return to the job site and make corrections or "touch ups."

47. Defendants trained Plaintiffs on the techniques they used while employed by Defendants and did not require Plaintiffs to be skilled in these techniques before hiring them.

48. Defendants required Plaintiffs to comply with Defendants' dress code. Plaintiffs were required to wear a Premiere or Mériduet t-shirt and white pants and were prohibited from deviating from this dress code.

49. Regardless of whether they wore a Mériquet or Premiere t-shirt at a particular job, Plaintiffs received their pay in the same manner—from Premiere.

50. Plaintiffs reported to work locations as directed by Defendants. Defendants set Plaintiffs' work schedule, directing them as to which project to work on, what time to start and what time to finish. If Plaintiffs finished work early at a particular site, Defendants would often instruct them to go to another work site to finish out the day. Defendants also required Plaintiffs to stay longer if a painting job was not finished by the end of the work day. Plaintiffs were not free to perform their painting duties as they wished.

51. Defendants instructed Plaintiffs as to how to behave at job sites, how loudly they could converse while at work, and even how to pack lunch and beverages neatly to avoid making a mess. Defendants prohibited Plaintiffs from smoking or drinking at Defendants' designated work locations. In an August 20, 2009 letter, Defendants informed the painters: "we are compelled to remind you of a few behavioral elements you have to respect on the jobsites." The letter, which upon information and belief was given to all Plaintiffs, stated that the jobsite was to be kept tidy, food must be eaten outside, and drinks must be placed in small buckets. The letter also reminded painters to wear a clean white uniform with an intact t-shirt over it. Finally, the letter reminded Plaintiffs to "be on time for the opening of the jobsite: if it opens at 8 AM then you have to be dressed and working at 8 AM, not be arriving at 8 AM." Defendants reprimanded Plaintiffs when they deviated from these instructions.

52. Plaintiffs also were not free to work when they wished. They were required to schedule vacations for times when business was slower. Vacations were required to be scheduled weeks in advance, generally could not last more than a week at a time, and required Defendants' approval. Plaintiffs were not paid for their vacation time.

53. Defendants directed the Plaintiffs to work a full work day, with a half (1/2) hour to one (1) hour break. Defendants set the time for Plaintiffs to take lunch and the duration of such lunch period.

54. Plaintiffs believed they were required to work for Defendants if Defendants offered them work and believed they would be fired if they worked for anyone else during periods when they were in Defendants' employ or if they turned down a job offered by Defendants.

55. At all times relevant to this complaint, Defendants either provided or reimbursed Plaintiffs for purchasing the majority of the equipment Plaintiffs used to perform painting jobs. This included paint, trays, ladders, scaffolding and other tools as well as t-shirts and badges bearing Mériquet and Premiere insignia. When specific jobs required the use of a hard-hat or other specialized equipment, Defendants provided it.

56. When Plaintiffs needed supplies for a job, Defendants often instructed them to go to a location of Janovic, a chain painting supply store at which Defendants maintained store accounts, to obtain the necessary items. Defendants pre-registered certain painters as authorized users of their accounts at Janovic stores. Plaintiffs shopped for supplies at Janovic and charged them to Defendants' account.

57. If Plaintiffs needed supplies that were not available at Janovic or needed to purchase supplies for a job outside New York City, they submitted receipts to Defendants and were reimbursed for those purchases.

58. At all times relevant to this complaint, Defendants directly set the hourly rates paid to Plaintiffs. Plaintiffs were not able to negotiate their rate of pay. The rate of pay was dictated by Defendants.

59. Often when Plaintiffs were instructed to travel long distances to conduct painting jobs, Defendants booked and paid for Plaintiffs' travel, food, lodging, gas, tolls, rental car, and other related expenses.

60. Customers paid Defendants directly for Plaintiffs' work. Plaintiffs did not receive tips.

61. Defendants had the power to terminate Plaintiffs.

62. The duties performed by Plaintiffs for Defendants were integral to Defendants' operations and the conduct of their business.

63. At all times during the term of Plaintiffs' respective employment for Defendants, as a matter of economic reality and under the totality of the circumstances, Plaintiffs were Defendants' employees within the meaning of the FLSA and the NYLL. 29 U.S.C. § 203(e); N.Y. Lab. Law § 651(5).

## **II. All Defendants Jointly Employed the Plaintiffs**

64. All of the Defendants were or are Plaintiffs' joint employers under the FLSA and the NYLL.

### **a. Premiere**

65. Premiere is a company specializing in custom and decorative painting. It operates primarily within New York State, although it has been hired to perform work in Connecticut, Georgia, Florida, California, and even Paris, France, among other locations within the United States and overseas.

66. As painters, Plaintiffs were responsible for an integral part of Premiere's business.

67. Throughout the period relevant to this complaint, Plaintiffs reported to work at Premiere job sites at the direction of Premiere managers. Meetings related to their work occurred at Premiere's headquarters.

68. When Premiere's business was slow, Plaintiffs were sometimes directed by their supervisors at Premiere to work on remodeling Premiere's offices.

69. Plaintiffs wore t-shirts bearing Premiere's logo while working at most job sites.

70. During the times Plaintiffs worked for Premiere, Premiere was their primary source of income.

71. As detailed above, Premiere strictly controlled Plaintiffs' work. Premiere managers told Plaintiffs where and when to work, what techniques and equipment to use, when touch-ups were required for unsatisfactory work, how to behave at job sites, and even when to break for lunch. Premiere managers retained and exercised the right to hire and fire Plaintiffs.

**b. Mériguet**

72. Mériguet is a company specializing in custom and decorative painting. It operates primarily in France, but also does substantial business within New York State.

73. Mériguet and Premiere share personnel, and distinctions between the two entities are largely illusory. Plaintiffs worked on projects wearing t-shirts bearing Mériguet insignia. Often in such instances Plaintiffs worked alongside French Mériguet employees who traveled from France to New York on a temporary basis to work on the project and were supervised by Mériguet managers. Plaintiffs worked explicitly for Mériguet on a number of projects, sometimes for months at a time.

74. Plaintiffs' work benefitted Mériguet. For example, in or about the summer of 2010, some Plaintiffs worked for Mériguet, alongside French Mériguet employees, painting and

restoring the Lycée Français on the Upper East Side. They were supervised by Mériguet managers and were required to wear Mériguet t-shirts for this project. Approximately one year later, Plaintiffs worked once again at the Lycée Français (which later became the home of the Emir of Qatar). This time, they were required to wear Premiere t-shirts for the project.

75. Mériguet and Premiere apparently commingled funds, as Plaintiffs were paid by Premiere for work they performed for customers who had hired Mériguet.

76. Defendant Premiere and Defendant Mériguet have held themselves out to the general public as one and the same. For example, upon information and belief, Premiere and Mériguet have jointly sponsored lectures at the Institute of Classical Architecture and Art and have contributed joint donations to the Institute of Classical Architecture and Art representing themselves as one entity.

77. Premiere and Mériguet were (and remain) closely associated, sharing materials and space. The brownstone where Premiere is headquartered also serves as a temporary place of residence for French Mériguet workers who travel to New York to work on short-term projects. These workers work alongside and provide some training to Premiere painters. The brownstone also houses studio and storage space where no distinction is made between Premiere and Mériguet materials and samples.

78. Even when Plaintiffs were not explicitly working on Mériguet projects, Mériguet and its managers, including Defendant Courtois, controlled and supervised Plaintiffs' work through Premiere and Defendant Soares de Jesus. Mériguet and its managers were aware or should have been aware of Plaintiffs' work and had the authority to terminate them or alter the terms of their employment.

79. Through its relationship with Premiere, Mériquet controlled matters traditionally handled by an employer in relation to an employee. For instance, Mériquet accountants supervised Premiere's books and payroll, and Mériquet officers regularly visited Premiere job sites in the United States to assure that Premiere's work conformed to Mériquet's quality standards. Mériquet managers, including Defendant Courtois, supervised Premiere managers, including Defendant Soares de Jesus. These functions constituted operational control of significant aspects of day-to-day business functions relating to Plaintiffs' employment.

80. In addition, upon information and belief, Premiere and Mériquet have the same primary owner: Defendant Courtois.

**c. Saul Soares de Jesus**

81. From 2007 to the present, Defendant Soares de Jesus has been Plaintiffs' direct supervisor.

82. Upon information and belief, from 2009 until November or December 2013, he was also the Chief Executive Officer of Premiere.

83. During his time as Plaintiffs' supervisor, Defendant Soares de Jesus maintained frequent—often daily—contact with Plaintiffs throughout the duration of their work for Defendants.

84. Defendant Soares de Jesus was responsible for assigning work to the painters, informing them when and where to appear to perform work for Premiere, and supervising the quality of their work. He authored memoranda regarding required workplace conduct and was responsible for day-to-day quality control. Defendant Soares de Jesus was responsible for determining whether each Plaintiff's work was satisfactory on a day-to-day basis and had the authority to order a painter to return to a job site and touch up any mistakes.

85. During his time as Plaintiffs' supervisor, Defendant Soares de Jesus had the authority to hire and fire painters for Premiere.

86. Defendant Soares de Jesus was primarily responsible for setting Plaintiffs' work hours and rate of pay.

**d. Antoine Courtois**

87. During the times relevant to this complaint, Defendant Courtois was Defendant Soares de Jesus's supervisor.

88. Defendant Courtois is the President of Mériquet. He is also the managing director of the limited liability company that owns the building where Premiere is based. Upon information and belief, he is also the primary owner of both Premiere and Mériquet.

89. Plaintiffs' work benefitted Defendant Courtois. He was directly enriched by all profits and successes enjoyed by Premiere and Mériquet as a result of Plaintiffs' work.

90. Defendant Courtois was known by Plaintiffs as "the big boss." Upon information and belief, Defendant Courtois does not report to anyone else at Mériquet or Premiere. He sits atop the chain of command for both Premiere and Mériquet and is responsible for both companies' overall business strategy and is the ultimate authority on all Premiere and Mériquet business decisions.

91. Defendant Courtois knew or should have known of Plaintiffs' work for Premiere and Mériquet.

92. Defendant Courtois had, and continues to have, the power to hire or fire Plaintiffs.

93. Defendant Courtois supervised and controlled Plaintiffs' work through regular visits from France to New York, during which he inspected Premiere work sites and supervised Premiere's business.

94. Defendant Courtois controlled both Premiere and Mériquet financially and, upon information and belief, had the power to determine Plaintiffs' rate and method of payment.

95. Defendant Courtois had functional control over both Premiere and Mériquet.

96. As a matter of economic reality and considering the totality of the circumstances, all Defendants acted as employers of the Plaintiffs during the relevant period.

### **III. Defendants Did Not Properly Compensate Plaintiffs for Overtime**

97. Both the FLSA and the NYLL require that employees be paid an overtime rate of one and one-half times the regular rate of pay for each hour of work over forty (40) hours per week. 29 U.S.C. § 207; N.Y. Lab. Law § 650 *et seq.*; N.Y. Comp. Codes R. & Regs. tit. 12, § 142-2.2.

98. Although Defendants were and are employers subject to the wage requirements of the FLSA and the NYLL, they failed to post notices explaining the requirements of the FLSA and the NYLL so as to permit Plaintiffs to observe such notices readily.

99. At all times relevant to this complaint, Plaintiffs were paid an hourly or daily rate of pay, their "regular rate of pay." For instance, Named Plaintiffs Almendras, Atamiranda, and Vera were paid a flat rate of \$25 per hour, while Gilberto Oliveira was paid a daily rate of \$250 per 8-hour day, or \$31.25 per hour.

100. Plaintiffs routinely worked more than forty (40) hours per week while working for Defendants.

101. While working for Defendants, Plaintiffs were not paid overtime for each hour worked in excess of forty (40) hours per week. Instead, Defendants paid each Plaintiff a flat rate for each overtime hour he worked. That flat rate was in all cases equal to or less than the regular rate of pay.

102. Mr. Altamiranda, for example, worked hundreds of hours of overtime while employed by Defendants and was never paid time-and-a-half. For instance, during the week of March 19, 2012, Mr. Altamiranda worked 48 hours at Defendants' job sites. During the week of April 16, 2012, Mr. Altamiranda worked 56 hours at Defendants' job sites. During the week of August 6, 2012, Mr. Altamiranda worked 50 hours at Defendants' job sites. In all these instances and all other instances when he worked overtime, he was paid \$25 per hour for both regular and overtime hours.

103. Mr. Almendras also worked hundreds of hours of overtime while employed by Defendants and was never paid at overtime rates. Instead, he was always paid \$25 per hour for both regular and overtime hours. For instance, during the week of April 19, 2010, Mr. Almendras worked 58 hours at Defendants' job sites; during the week of June 14, 2010, Mr. Almendras worked 68 hours at Defendants' job sites; and during the week of August 20, 2012 Mr. Almendras worked 54 hours at Defendants' job sites. However, Mr. Almendras was paid \$25 per hour for both regular and overtime hours.

104. Similarly, Mr. Vera worked hundreds of hours of overtime while employed by Defendants and was never paid time-and-a-half. Instead, he was paid \$25 per hour for both regular and overtime hours. For instance, Mr. Vera worked 60 hours during the week of April 12, 2010; 77 hours during the week of May 10, 2010; and 93 hours during the week of May 17, 2010 at Defendants' job sites.

105. Likewise, Mr. Oliveira also worked hundreds of overtime hours and was never paid time-and-a-half by Defendants. Instead, he was always paid \$25 per hour of overtime he worked, which was less than his regular rate of pay. For example, Mr. Oliveira worked 58 hours during the week of April 5, 2010; 59 hours during the week of May 17, 2010; 52 hours during

the week of June 4, 2010; 56 hours during the week of December 12, 2011; 64 hours during the week of May 7, 2012; and 58 hours during the week of May 21, 2012 at Defendants' job sites.

106. Defendants knowingly and willfully failed to pay Plaintiffs the overtime compensation required by both the FLSA and the NYLL.

#### **IV. Defendants Took Unlawful Deductions From Plaintiffs' Wages**

107. The NYLL prohibits employers from making any deductions from an employee's wages unless the deduction is permitted by law or the employee has agreed to the deductions and they are taken for the employee's benefit. N.Y. Lab. Law § 193(1).

108. The NYLL also prohibits employers from making any charges against an employee's wages or requiring an employee to make any payment by separate transaction that would not be permissible as a deduction. N.Y. Lab. Law § 193(3).

109. New York law requires employers to pay for workers' compensation insurance in full and prohibits employers from requiring or requesting any employee contribution. Any agreement by any employee to pay any portion of a workers' compensation premium is void by statute and any employer who deducts from an employee's wages for such purpose is guilty of a misdemeanor under New York Workers' Compensation Law Section 31.

110. Defendants diverted Plaintiffs' wages to pay for general liability insurance policies to benefit Defendants.

111. At certain times relevant to this complaint, Defendants illegally deducted general liability insurance premiums from Plaintiffs' wages. At other times, Defendants unlawfully forced Plaintiffs to pay for insurance policies that Defendants set up in their names. Though dressed up as a separate transaction with a third party, these forced payments were illegal deductions from Plaintiffs' wages.

112. Beginning in 2009, Defendants collected money from Plaintiffs and set up general liability insurance policies with Utica First in Plaintiffs' names. In many cases, Defendants filled out all the required paperwork for Plaintiffs and simply required them to sign it.

113. On August 21, 2009, Defendants sent letters to Plaintiffs stating that they "would have to purchase insurance from Utica First (our insurance company) at the cost of \$100 a month to be allowed to continue you [sic] employment with us." The letters informed Plaintiffs that they were required to fill out a form and "include a deposit check for \$350.00" to pay for liability insurance.

114. Around the end of 2011, however, Defendants changed their policy and began fronting the costs of general liability insurance policies in Plaintiffs' names and then deducting those costs from Plaintiffs' wages as a purported repayment of a "loan."

115. For example, beginning in 2009 Defendants required Mr. Oliveira to pay Utica First a \$350 deposit and then \$100 per month for liability insurance. But Mr. Oliveira received a letter on December 7, 2011, addressing him as an "employee" and informing him that, "[b]eginning January 2012 we will pay your policy for the year as a loan, and you must decide and let [us] know how you would like to pay over the year . . . . You must sign the form and return it to the office asap, this will be considered your contract to pay in full the policy." Defendants then gave Mr. Oliveira a "loan" for \$1,054.00 to cover the costs of liability insurance for calendar year 2012 and deducted \$20.66 from his pay every week to compensate themselves.

116. Likewise, in calendar year 2012, Defendants deducted \$1,054.00 from Mr. Almendras's pay, in weekly installments, as a purported repayment of a "loan" for liability insurance.

117. Similarly, for approximately the first two years of his employment for Defendants, Defendants required Mr. Vera to pay approximately \$1,800 per year for liability insurance that Defendants required him to obtain and arranged for him. Thereafter, they deducted the costs of general liability insurance—approximately \$20 per week—directly from his paycheck.

118. Similarly, for approximately the first two years of his employment for Defendants, Defendants required Mr. Altamiranda to pay approximately \$1,200 per year for insurance that Defendants required him to obtain and arranged for him. Thereafter, they deducted the costs of general liability insurance directly—approximately \$20 per week—from his paycheck.

119. Beginning in 2009, Defendants also illegally deducted the cost of workers' compensation insurance from Plaintiffs' wages.

120. For example, in calendar year 2011, Defendants deducted a total of \$3,750.06 from Mr. Altamiranda's pay as a purported "employee contribution" for workers' compensation insurance. In certain other years, Defendants failed to provide Mr. Altamiranda with any accounting of the specific deductions they took from his wages. Mr. Altamiranda was told that Defendants were charging him 8.5% of his pay for workers' compensation insurance.

121. Similarly, Defendants also took deductions from Mr. Almendras's and Mr. Vera's wages for workers' compensation insurance. Defendants told them that that they were being charged 8.5% of their gross pay for workers' compensation expenses.

122. Defendants deducted approximately \$250 per week from Mr. Oliveira's wages from approximately 2009 until he ceased working for them, purportedly to pay for workers' compensation insurance.

123. While Plaintiffs in some instances signed documents purporting to authorize these deductions, those purported authorizations were obtained through the threat of termination or other adverse action or retaliation.

124. For example, on September 14, 2012, Defendants issued a memorandum setting forth new “regulations.” The memorandum stated in part that “‘extra’ time needed to complete or correct the job will be deducted from your time” and that “[t]he current weekly salary will be changed if your work does not equal the expected quality for the amount paid.”

125. Upon receipt of this September 14, 2012 letter, Mr. Almendras protested against the newly imposed “regulations,” believing that the deductions were unfair since the amount was to be determined at the discretion of Defendant Soares de Jesus. Mr. Almendras was subsequently told that Premiere no longer had any work for him.

**V. Defendants Failed to Provide Required Time-of-Hire Notices and Wage Statements**

126. Defendants failed to provide to Plaintiffs at the time of hiring, or at any subsequent time, notices setting forth the rate and basis of pay, allowances claimed, pay day, employer name and contact information, and any “doing business as” names used by the employer.

127. Defendants failed to provide, along with each payment of wages or at any other time, statements listing the dates of work covered by the payment, the employee’s name, the employer’s name, the address and phone number of the employer, the rate and basis of pay (including overtime pay), the number of regular hours worked, the number of overtime hours worked, gross wages, deductions, allowances claimed, and net wages.

128. These failures violated NYLL § 195.

**VI. Knowing and Intentional Acts**

129. Defendants knowingly, willfully, and intentionally committed the acts alleged herein.

130. Defendants knew that the nonpayment of overtime pay would financially injure Plaintiffs.

131. Defendants knowingly and intentionally took unlawful deductions from Plaintiffs' wages.

132. Defendants knowingly and intentionally failed to provide Plaintiffs with adequate time-of-hire notices and wage statements.

**JURY TRIAL DEMAND**

133. Plaintiffs demand trial by jury in this action.

**CAUSES OF ACTION**

**FIRST CLAIM FOR RELIEF**

**Claim for Overtime Wages Under the Fair Labor Standards Act (Against All Defendants)**

134. Plaintiffs reallege and reincorporate by reference each and every allegation contained in all preceding paragraphs as if fully set forth herein.

135. Defendants knowingly, willfully, and intentionally failed to pay overtime pay at a rate one-and-one-half times the regular rate for hours worked in excess of forty (40) hours a week, in violation of 29 U.S.C. § 207(a)(1).

136. Because of Defendants' willful violation of the FLSA, Plaintiffs are entitled to recover from Defendants, jointly and severally, unpaid overtime compensation, and an equal amount in the form of liquidated damages, as well as reasonable attorneys' fees and costs of the action pursuant to the FLSA, all in an amount to be determined at trial. 29 U.S.C. § 216(b).

**SECOND CLAIM FOR RELIEF**

**Claim for Overtime Wages Under the New York Labor Law (Against All Defendants)**

137. Plaintiffs reallege and reincorporate by reference each and every allegation contained in all preceding paragraphs as if fully set forth herein.

138. Defendants knowingly, willfully, and intentionally failed to pay overtime pay for hours worked in excess of forty (40) hours a week at a rate one and one-half times the regular hourly rate.

139. Pursuant to NYLL §§ 198.1-a and 663, an employer who willfully fails to pay overtime required by the Minimum Wage Act is liable, in addition to the amount of any under-payments, for liquidated damages equal to twenty-five percent (25%) of the amount of the under-payment for violations occurring before April 9, 2011 and for liquidated damages equal to one hundred percent (100%) of the amount of the under-payment for violations occurring after that date.

140. Because of Defendants' willful violation of the NYLL, Plaintiffs are entitled to recover from Defendants, jointly and severally, their unpaid overtime compensation and liquidated damages, as well as reasonable attorneys' fees and the costs of the action, including pre-judgment interest, all in an amount to be determined at trial.

**THIRD CLAIM FOR RELIEF**

**Claim for Unlawful Kickbacks And Unauthorized Deductions Under New York Labor Law (Against All Defendants)**

141. Plaintiffs reallege each and every allegation contained in all preceding paragraphs as if fully set forth herein.

142. Defendants knowingly, willfully, and intentionally took deductions from Plaintiffs' wages in violation of the NYLL. N.Y. Lab. Law §§ 193 and 198-b, N.Y. Comp. Codes R. & Regs. tit. 12, § 195-4.5.

143. Defendants improperly took deductions from Plaintiffs' wages for general liability insurance and workers' compensation insurance.

144. Due to Defendants' willful violations of the NYLL, Plaintiffs are entitled to recover from Defendants, jointly and severally, their unpaid wages relating to Defendants' deduction for general liability insurance and workers' compensation insurance, plus liquidated damages, as well as reasonable attorneys' fees and costs of the action, including pre-judgment interest, all in an amount to be determined at trial.

#### **FOURTH CLAIM FOR RELIEF**

##### **Claim for Unlawful Failure to Provide Time-of-Hire Notices and Wage Statements (Against All Defendants)**

145. Plaintiffs reallege each and every allegation contained in all preceding paragraphs as if fully set forth herein.

146. Defendants knowingly, willfully, and intentionally failed to provide their employees with the notices required by NYLL § 195(1) and the wage statements required by NYLL § 195(3).

147. Pursuant to NYLL § 198(1-b), Plaintiffs are entitled to recover from Defendants \$50 per employee per week after April 9, 2011 in which Defendants violated NYLL § 195(1), not to exceed \$2,500 per employee, together with costs and reasonable attorney's fees.

148. Pursuant to NYLL § 198(1-d), Plaintiffs are entitled to recover from Defendants \$100 per employee per week after April 9, 2011 in which Defendants violated NYLL § 195(3), not to exceed \$2,500 per employee, together with costs and reasonable attorney's fees.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request this Court to grant them the relief requested as follows:

- (1) Certifying a class pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- (2) Certifying a collective action brought pursuant to 29 U.S.C. § 216(b) and directing notice to individuals covered by the collective action;
- (3) Declaring Defendants' conduct complained of herein to be in violation of Plaintiffs' rights under the FLSA and the NYLL and their associated regulations;
- (4) Awarding Plaintiffs unpaid overtime pay under the FLSA and the NYLL;
- (5) Awarding Plaintiffs compensation for all unauthorized deductions and illegal payments under the FLSA and the NYLL;
- (6) Awarding Plaintiffs liquidated damages;
- (7) Awarding Plaintiffs the lesser of \$2,500 or \$50 per employee per week after April 9, 2011 in which Defendants violated NYLL § 195(1);
- (8) Awarding Plaintiffs the lesser of \$2,500 or \$100 per employee per week after April 9, 2011 in which Defendants violated NYLL § 195(3);
- (9) Awarding Plaintiffs pre-judgment and post judgment interest;
- (10) Awarding reasonable attorney's fees, costs, and expenses pursuant to 29 U.S.C. § 216(b) and NYLL §§ 198 and 663; and
- (11) Such other and further relief that the Court deems just and proper.

Dated: New York, New York  
December 12, 2013



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*ATTORNEYS FOR PLAINTIFFS*

**SECTION 216(b) FAIR LABOR STANDARDS ACT AUTHORIZATION**

*DARIO ALTA MIRANDA*

I, \_\_\_\_\_, hereby consent to be a Plaintiff in this lawsuit pursuant to Section 216(b) of the Federal Fair Labor Standards Act.

Dated: New York, New York  
December 10, 2013

  
\_\_\_\_\_  
PLAINTIFF

Sworn to before me this  
10<sup>th</sup> day of December, 2013

  
\_\_\_\_\_  
NOTARY PUBLIC

**ELIZABETH SAYLOR**  
Notary Public, State of New York  
No. 02SA6081608  
Qualified in Kings County  
Commission Expires Oct. 7, 2014

*This form has been translated from English to Spanish. ~~and agree to its terms and conditions.~~*

*III*  
Date: December 10, 2013

print: DIANA L. RODRIGUEZ

signature: *Diana L Rodriguez*

**SECTION 216(b) FAIR LABOR STANDARDS ACT AUTHORIZATION**

I, ROGELIO VERA hereby consent to be a Plaintiff in this lawsuit pursuant to Section 216(b) of the Federal Fair Labor Standards Act.

Dated: New York, New York  
December 10, 2013

  
\_\_\_\_\_  
PLAINTIFF

Sworn to before me this  
10<sup>th</sup> day of December, 2013

  
\_\_\_\_\_  
NOTARY PUBLIC

**ELIZABETH SAYLOR**  
Notary Public, State of New York  
No. 029A8081808  
Qualified in Kings County  
Commission Expires Oct. 7, 2014

This form has been translated from English to Spanish,

DATE: December 10, 2013

Print: DIANA L. Rodriguez

signature: 

**SECTION 216(b) FAIR LABOR STANDARDS ACT AUTHORIZATION**

I, Gilberto Oliveira, hereby consent to be a Plaintiff in this lawsuit pursuant to Section 216(b) of the Federal Fair Labor Standards Act.

Dated: New York, New York  
December 10, 2013

Gilberto Oliveira  
PLAINTIFF

Sworn to before me this  
10<sup>th</sup> day of December, 2013

[Signature]  
NOTARY PUBLIC

ELIZABETH SAYLOR  
Notary Public, State of New York  
No. 02SA6081608  
Qualified in Kings County  
Commission Expires Oct. 7, 2014

Interpreted by Lissett Ferreira  
Lissett C Ferreira  
December 10, 2013

**SECTION 216(b) FAIR LABOR STANDARDS ACT AUTHORIZATION**

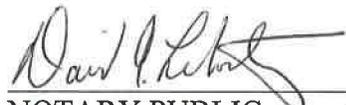
I, Juan Almendarez hereby consent to be a Plaintiff in this lawsuit pursuant to Section 216(b) of the Federal Fair Labor Standards Act.

Dated: New York, New York  
December 10, 2013

11

  
\_\_\_\_\_  
PLAINTIFF

Sworn to before me this  
11 10<sup>th</sup> day of December, 2013



NOTARY PUBLIC State of New York DAVID A. LEROWITZ

Commission # 02LE629 2904

Qualified in New York County

My Commission Expires: November 12, 2017